



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Treasurer TITLE-SERIES: 112-15
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: West Virginia College & Jumpstart Savings
Programs Board of Trustees Bylaws
CITE STATUTORY AUTHORITY: §18-30-5

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 05/04/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: James G Fuerhoff

ADDRESS: 1900 Kanawha Boulevard East, Rm E-145

EMAIL: james.fuerhoff@wvsto.com

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The procedural rule governs the operations and bylaws of the West Virginia College and Jumpstart Savings Programs Board of Trustees and its committees.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This rule is being updated to reflect the re-composition of the board pursuant to SB 8 signed into law during the 2022 Regular Session of the Legislature.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 112
PROCEDURAL RULE
WEST VIRGINIA COLLEGE ~~PREPAID TUITION~~ AND JUMPSTART SAVINGS PROGRAMS
BOARD OF TRUSTEES

SERIES 15
BYLAWS

§112-15-1. General.

1.1. Scope. – This rule governs the operations, meetings, records and officers of the West Virginia College ~~Prepaid Tuition~~ and Jumpstart Savings Programs Board of Trustees and its committees.

1.2 Authority. – W. Va. Code §18-30-5.

1.3. Filing Date. – ~~September 3, 2014.~~

1.4. Effective Date. – ~~October 3, 2014.~~

§112-15-2. Definitions.

For purposes of this rule, unless a different meaning is clearly required by the context:

2.1. “Acts” means the West Virginia College ~~Prepaid~~ Tuition and Savings Program Act in W. Va. Code §18-30-1 *et seq* and the West Virginia Jumpstart Savings Act in W. Va. Code §18-30A-1 *et seq*.

2.2. “Board” or “Board of Trustees” means the West Virginia College ~~Prepaid Tuition~~ and Jumpstart Savings Programs Board of Trustees.

2.3. “Treasurer” means the West Virginia State Treasurer, or his or her designee.

§112-15-3. Offices.

3.1. The principal office of the Board shall be located at the State Capitol in the City of Charleston, County of Kanawha, State of West Virginia. The Board may have such other office or offices, and transact business, either within or without the State of West Virginia, as the Board may designate or as the business of the Board may require from time to time.

§112-15-4. Trustees.

4.1. ~~Ex Officio and Appointed Trustees—Nine~~ Eleven persons, who must all be state residents, constitute the Board: the State Treasurer, or his or her designee, who is chairperson and presiding officer of the Board ; the State Superintendent of Schools, or his or her designee; the Secretary of Education and the Arts, or his or her designee; the State Treasurer, or his or her designee; two one representatives appointed by the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission;; ~~one representing the interests of the West Virginia state colleges and universities and one representing the interests of West Virginia community and technical colleges~~ one representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education; and five ~~seven~~ other state

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residents appointed by the Governor with the advice and consent of the West Virginia Senate. Of the seven persons appointed, ~~two~~ three persons shall be private citizens not employed by, or an officer of, the state or any state political subdivision with knowledge, skill, and experience in a financial field, with reasonable efforts to appoint one such citizen who holds a designation of Chartered Financial Analyst, offered by the CFA Institute; two persons with knowledge, skill, and experience in trade occupations or businesses with one person representing a labor organization representing tradespersons in this state and one person representing a business or entity offering trade or skilled labor apprenticeships in this state; one and two persons shall represent the interests of private institutions of higher education in West Virginia appointed from one or more nominees of the West Virginia ~~Association of Private Colleges~~ Independent Colleges and Universities; and two persons shall represent the public.

4.2. ~~Powers~~— The Board shall have such powers and duties as provided for by law, including, without limitation, the Acts.

4.3. ~~Term of Office~~— The term of an appointed Trustee shall be for five years, or until his or her death, disability, resignation, removal or the appointment of a successor. A Trustee may be reappointed. A Trustee appointed by the Governor to fill a vacancy shall be a person representing the same interests and shall serve for the balance of the unexpired term

4.4. Resignations and Vacancies

~~4.4.a.~~ 4.4.1. Resignations from the Board shall be in writing, sent to the Governor, with a copy sent to the Chairman. Neither the Governor nor the Board is required to accept or to act on a resignation for it to be effective.

~~4.4.b.~~ 4.4.2. Appointments to fill vacancies existing on the Board, including without limitation a vacancy resulting from the death, disability, resignation or removal of a Trustee, shall be for the unexpired term.

4.5. Compensation – Each Trustee may be paid his expenses in the conduct of his or her official duties from the College and Jumpstart Savings ~~Prepaid Tuition and Savings Program~~ Administrative Account at the same rate as paid employees of the State Treasurer's Office.

§112-15-5. Committees.

5.1. The Board may establish standing and special Committees as it considers necessary to carry out its responsibilities. The Chairman may establish one or more special Committees as he or she considers appropriate. The Chairman shall appoint Committee members and may appoint Trustees and other persons to serve on Committees. Each standing Committee shall report at each Board meeting. Committees established by the Board shall continue in existence until dissolved by action of the Board.

5.2. The designation and appointment of a committee and the delegation thereto of authorities shall not operate to relieve the Board or any individual Trustee of any responsibility imposed upon it or him by law.

§112-15-6. Board and Committee Meetings.

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~~6.1. Open Governmental Proceedings—~~ All Board and Committee meetings, and all notices required, shall comply with the provisions of the West Virginia Open Governmental Proceedings Act, W. Va. Code §6-9A-1-et seq.

~~6.2. Quarterly Board Meetings—~~ Quarterly meetings of the Board shall be held at such time and place as called by the Chairman or as determined by the Board.

~~6.3. Annual Board Meetings—~~ The Board shall hold an annual meeting ~~during the third calendar quarter of~~ each year, which meeting shall be considered a quarterly meeting.

~~6.4. Committee Meetings—~~ Committee meetings shall be held at such time and place as called by the Chairman, the Committee Chairman or any two members of the Committee.

6.5. Special and Emergency Meetings

~~6.5.a1.~~ A special meeting is a meeting called for a special purpose and is other than a regular or emergency meeting. An emergency meeting is called to address an unexpected event which requires immediate attention because it poses an imminent threat to public health or safety, an imminent threat of damage to public or private property, an imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

~~6.5.b2.~~ Special and emergency Board meetings may be called by or at the request of the Chairman or by any two Trustees. Special and emergency Committee meetings may be called by or at the request of the Chairman or by any two members of the Committee. The purpose of an emergency meeting must be stated at the meeting and in the minutes.

6.6. Filing Notices with Secretary of State –

6.6.1. Notices of regular and special Board and Committee meetings shall be filed electronically on the website of the Secretary of State at least five business days prior to the meeting date.

6.6.2. Notices of emergency Board and Committee meetings shall be filed electronically on the website of the Secretary of State as soon as practicable prior to the meeting date.

6.6.3. All notices must state the date, time, place and purpose of the meeting. Notices of emergency meetings must state the date, time, place and purpose of the meeting, as well as the facts and circumstances of the emergency.

6.7. Notice to Trustees and Committee Members –

~~6.7.a1.~~ Notice shall be given to Trustees and Committee Members at least ten days prior to a regular meeting, at least five days prior to a special meeting, and as soon as practicable prior to an emergency meeting. The notice shall fix the date, time, place and purpose of the meeting. The address last given by a Trustee or Committee member shall be the address used.

~~6.7.b2.~~ Notice of any regular, special or emergency meeting shall be considered received when sent by written notice delivered personally, or by messenger, telecopier, facsimile, telegraph, e-mail or other means of electronic communication by the Secretary.

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6.7.~~6~~3. If mailed, such notice shall be deemed to be given and delivered when deposited in the United States Mail, with postage thereon prepaid, or when deposited with an overnight mail service, with the cost borne by the Board.

6.8. ~~Waiver of Notice~~ — Unless otherwise provided by law, whenever any notice is required to be given to a Trustee or Committee member under the provisions of these Bylaws, the provisions of the Acts or any other applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice and attendance of the person at a meeting shall constitute a waiver of notice, unless the person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6.9. Agenda –

6.9.a1. The Chairman shall prepare the agenda for each Board meeting; a Committee Chairman shall prepare the agenda for each Committee meeting.

6.9.b2. An agenda shall list matters in the order they are to be considered. During a meeting, the Board or Committee may consider matters out of order.

6.9.c3. An agenda for an annual or regular meeting shall be available upon request to the public and posted at the State Treasurer's Office at the State Capitol and on the Board website at least three business days prior to a regular or special meeting and as soon as practicable prior to an emergency meeting.

6.9.d4. An agenda shall state the purpose of the meeting and any matter requiring the Board to take official action.

6.9.e5. Items on an agenda must be stated with sufficient specificity to put the public on notice of the nature of the matter being discussed. ~~Board agendas shall include the following:~~

~~6.9.e.1. Call to Order~~

~~6.9.e.2. Roll Call~~

~~6.9.e.3. Approval of Minutes of Previous Meeting~~

~~6.9.e.4. Communications~~

~~6.9.e.5. Committee Reports~~

~~6.9.e.5.A. — Audit~~

~~6.9.e.6. Chairman's Report~~

~~6.9.e.7. Unfinished Business~~

~~6.9.e.7.A. — Program Investment Consultant~~

~~6.9.e.7.B. — Program Actuary~~

~~6.9.e.7.C. — Program Manager~~

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~~6.9.e.8. New Business~~

~~6.9.e.9. Election of Officers~~

~~6.9.e.10. Adjournment~~

6.9.f6. An agenda may be amended up to two business days before the meeting. Amended agendas must be posted in the same manner as an original agenda.

6.9.g7. Agendas may be amended at a meeting only if a true emergency arises. To add an emergency matter to an agenda, the facts and circumstances constituting the emergency must be explained on the record at the meeting.

6.10. ~~Telephonic and Electronic Attendance and Voting at Meetings~~— Notwithstanding anything herein contained to the contrary, one, more or all Trustees or Committee members may participate in a meeting of the Board or a Committee by means of electronic mail, conference telephone, video conference or other electronic communications equipment. A Trustee or Committee member participating in a meeting in accordance with this section is deemed to be present in person at the meeting and his vote shall have like effect and validity as though he or she were present.

6.11. ~~Quorum~~— A majority of the Trustees serving as of the meeting day shall constitute a quorum for the transaction of business at any meeting of the Board, and a majority of the members of a Committee serving as of the meeting day shall constitute a quorum for the transaction of business at a meeting of a Committee.

6.12. ~~Executive Session~~— The Board or a Committee may go into executive session for the purposes specified in W. Va. Code §6-9A-4 upon a majority vote on a motion in which the specific purposes are stated. The only matters that may be discussed in executive session are those specified in the motion. No actions may be taken during executive session. Minutes will not be taken.

6.13. ~~Continued Meetings~~— When it decides to continue a meeting, a majority of the Board shall vote to continue the meeting to a specific date, time and place. No further notice is required for continued meetings in accordance with this Section.

§112-15-7. Officers.

7.1. ~~Number~~— The officers of the Board shall be the Chairman and Secretary. The Board may elect or appoint any other officers as it considers necessary.

7.2. ~~Holding More Than One Office~~— One person may hold more than one office, except that the Chairman and Secretary shall not be the same person. No officer shall execute, acknowledge or verify any instrument in more than one capacity, if such instrument is required by law or the Bylaws to be executed, acknowledged, verified or countersigned by two (2) or more officers.

7.3. Chairman —

7.3.a1. The Chairman shall be the principal executive officer of the Board and, subject to the control of the Board, shall in general supervise and control the business, operations, transactions and

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other matters of the Board. He or she shall, when present, preside at all meetings of the Board, and, in general, perform all duties incident to the office of the Chairman.

7.3.~~b~~2. As Chairman, his or her duties include, but are not limited to, negotiating and signing any contract or other document or instrument which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board to another person, or shall be required by law to be otherwise signed or executed; providing personnel from the State Treasurer's Office to act as staff for the Board and taking all necessary actions in connection with personnel related matters; obtaining all necessary goods and services needed for operation of the Program; representing the Board; and performing such duties as may be required by his position or as prescribed by the Board.

7.4. ~~Appointment of Secretary~~— The Chairman shall appoint a Secretary for the Board, who may be a Trustee or an employee of the State Treasurer's Office.

7.5. ~~Secretary~~— The Secretary shall:

7.5.~~a~~1. Prepare the minutes of each Board and Committee meeting and make them available within a reasonable time to the public and the media;

7.5.~~b~~2. Ensure the minutes reflect the purpose, date, time and place of the meeting and the name of each member who was present and who was absent;

7.5.~~c~~3. Keep the minutes of the proceedings of the Board in a secure and permanent paper or electronic format, along with copies of all documents distributed at the meetings; and provide copies of the minutes to the Trustees;

7.5.~~d~~4. See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

7.5.~~e~~5. Be custodian of the books, records and other property of the Board;

7.5.~~f~~6. Keep all records and files of the Board open to the inspection of each and every Trustee and the public in accordance with the West Virginia Freedom of Information Act;

7.5.~~g~~7. Attest to the books, records, proceedings, documents and resolutions of the Board;

7.5.~~h~~8. Certify, when necessary and when authorized, the books, records, proceedings, documents and resolutions of the Board;

7.5.~~i~~9. Attest to the signature of any officer of the Board; and

7.5.~~j~~10. In general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board or by the Chairman.

7.6. ~~Removal~~— Any officer or agent may be removed by the Board, with or without cause. Election or appointment of an officer or agent shall not create contract rights.

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7.7. ~~Vacancies~~— A vacancy in any office may be filled by the Board at a regular or special meeting for the unexpired portion of the term.

§112-15-8. Designees and Indemnification.

8.1. ~~Designees~~— Any duty authorized, provided and/or required to be performed by any Trustee or officer of this Board may be performed by his duly authorized designee.

8.2. ~~Indemnification of Trustees and Officers~~— To the extent permitted by law, each current and former Trustee, officer, designee, Committee member and State Treasurer's Office employee performing services on behalf of the Board, his heirs and personal representatives, shall be indemnified by this Board against costs and expenses (including judgments, fines, taxes, penalties and interest) at any time reasonably incurred by him arising out of or in connection with any claim, action, suit or proceeding, civil or criminal, administrative or investigative, against him or to which he may be made a party by reason of his being or having been a Trustee, officer, designee, Committee member or State Treasurer's Office employee performing services on behalf of the Board, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty to the Board. If in the judgment of the Board, a settlement of any claim, action, suit or proceeding so arising be deemed in the best interest of the Board, any such Trustee, officer, designee, Committee member or State Treasurer's Office employee performing services on behalf of the Board shall be reimbursed for any amounts paid by him in effecting such settlement and reasonable expenses incurred in connection therewith. If payment of any costs and expenses is advanced pursuant to this provision prior to adjudication or settlement, such payments shall be repaid to the Board in the event it shall ultimately be determined that such Trustee, officer, designee, Committee member or State Treasurer's Office employee performing services on behalf of the Board is not entitled to be indemnified by the Board pursuant to this provision or pursuant to a duly adopted resolution of the Board. The right of indemnification set forth herein shall be in addition to any and all other rights to which any Trustee, officer, designee, Committee member or State Treasurer's Office employee performing services on behalf of the Board may be entitled as a matter of law or pursuant to a duly adopted resolution of the Board, provided that the Board shall not indemnify any person or persons who shall be adjudged liable for gross negligence or willful misconduct in the performance of a duty to the Board.

§112-15-9. Contracts and Accounts.

9.1. ~~Receipts~~— Any member of the Board is authorized to receive any moneys due and payable to the Board from any source whatsoever.

9.2. ~~Contracts Authorization~~— The Board may authorize the Chairman or its officers or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Board. A contract, agreement or purchase required in the normal course of business in the total amount of \$25,000.00 or less does not require Board approval.

9.3. ~~Contracts with Trustees and Officers~~— No contract or other transaction between the Board and one or more of its Trustees, agents or any other corporation, firm, association or entity in which one or more of its Trustees are Trustees or officers or are financially interested, shall be authorized by the Board unless such contract or transaction has been approved in writing by the West Virginia Ethics Commission.

§112-15-10. Fiscal Year and Accounting Period.

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10.1. The fiscal year and accounting period of the Board shall begin July 1 and end June 30 each year.

§112-15-11. Parliamentary Authority.

11.1. Robert's Rules of Order shall govern the parliamentary procedures of Board and Committee meetings.

~~§112-15-12. Miscellaneous.~~

~~12.1. Except as otherwise specifically provided, for the purpose of these Bylaws, the term majority shall mean a number greater than one half (1/2) of the total.~~

~~12.2. Gender Usage— Except as otherwise specifically provided, for the purpose of these Bylaws, and as the context may require, the use of pronouns of the masculine gender shall be deemed to include pronouns of the feminine and neuter genders, and the use of pronouns of the feminine gender shall be deemed to include pronouns of the masculine and neuter genders.~~

§112-15-~~13~~2. Amendments and Suspension.

~~13~~2.1. ~~Amendments~~— These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board at any regular or special meeting of the Board.

~~13~~2.2. ~~Suspension of Bylaws~~— A unanimous vote of all ~~Trustees~~ members present at a Board meeting in which a quorum is present may suspend any provision of these Bylaws.